

ST 01-0053-PLR 12/20/2001 EXEMPT ORGANIZATIONS

An organization that holds a sales tax exemption number cannot use that number for purchases that are not in furtherance of its organizational purposes. (This is a PLR).

December 20, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of November 15, 2001 that we received on November 26, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to the AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This letter is written as a request for a private letter ruling under the Retailers Occupation Tax Act. The Taxpayer seeking the information is AAA ('AAA' or 'Taxpayer'). (Power of attorney enclosed). No Illinois audit is being conducted nor is litigation pending between Taxpayer and the Department of Revenue (Department).

AAA is an exclusively charitable organization and has an active Exemption Identification Number issued by the Department. BBB is a not-for-profit corporation. AAA is BBB's sole corporate member. BBB and AAA have some common directors. BBB owns a parcel of real estate upon which a facility offering housing for seniors is to be constructed. BBB has no administrative or operational personnel of its own and will rely on employees of AAA to handle management, administration and all negotiations for the construction project. Once completed, BBB will hire its own personnel to operate the facility.

AAA intends to act as independent general contractor for the construction of the facility. BBB has neither the personnel nor the experience to handle such a project on its own. As general contractor, AAA will purchase all tangible personnel property used in the proposed construction. In addition, AAA intends to hire sub-contractors to incorporate the building materials into BBB's real estate. AAA will receive a fee for its efforts and be reimbursed either periodically or at the end of the project by BBB for all materials and labor purchased to build the facility. Reimbursement will only occur after the materials for which reimbursement is sought are affixed to BBB's real estate.

The ROTA, (35 ILCS 120/2-5(11)), provides as follows:

§2-5. Exemption. Gross receipts from the sale of the following tangible personal property are exempt from the tax imposed by this Act:

(11) Personal property sold to a governmental body, to a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious, or educational purposes... On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active identification number issued by the Department.

The Use Tax Act, (35 ILCS 105/3-5), provides as follows:

§3-5. Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

(4) Personal property purchased by a governmental body, by a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious, or educational purposes... On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department.

The Department has long taken the view that a construction contractor is deemed the end user of tangible personal property purchased for incorporation into real estate, regardless of ownership. (ST-00-0009-PLR). The Illinois Supreme Court has stated as follows:

The builder buys his material to use, and not to resell as personal property, whether the real estate belongs to him or to a third-party at the time he is engaged in improving it. G.S. Lyons and Sons Lumber and Manufacturing Company v. Department of Revenue 23 Ill. 2d 180, 177 N.E. 2d 216 (1961).

In discussing situations where a general contractor buys building materials that are incorporated into real estate by subcontractors, the Department has stated as follows:

If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property. (ST-00-009-PLR).

AAA has personnel who are equipped to handle the task of overseeing the constructing of the contemplated facility. BBB does not have staff personnel to handle its affairs and will not have personnel until its housing facility is ready for operation. AAA's management of the project saves the expense of BBB, a not-for-profit corporation, the necessity of hiring staff before the time of such staff's functional necessity.

AAA, as a contractor, would normally incur use tax liability (its Illinois vendors would normally incur ROT) but for the exemptions in the use tax and retailers occupation tax

cited above. AAA would like to provide its suppliers with an exemption certificate, including its exemption identification number, to acquire building materials tax-free. Based upon the above facts and law, it is our opinion that no retailers occupation tax or use tax would be due on AAA's purchase of building materials.

Under the circumstances set out in this letter, we are seeking your opinion as to whether AAA or BBB would incur retailers occupation tax or use tax with respect to building materials purchased by AAA as a construction contractor for incorporation into real estate owned by BBB, the purpose of such purchases being the construction of a housing facility for seniors ultimately owned by BBB.

Thank you for your consideration and any help you can give to us.

DEPARTMENT'S RESPONSE

We regret we cannot grant the ruling you request. For the following reasons, we are required to conclude that purchases of building materials by AAA would be fully taxable.

As you know, organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers (an "E" number). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. Sales to governmental bodies are subject to tax unless the governmental body has obtained an active exemption identification number ("E" number) from the Department.

Companies selling tangible personal property to organizations that qualify as exclusively religious, charitable, or educational or to governmental bodies must be provided with an "E" number for sales to such organizations or governmental bodies to be tax exempt, unless another exemption can be documented.

Only sales of tangible personal property invoiced to the organization or governmental body itself are exempt. As a general proposition, individual members, clients or other associates of exempt organizations or governmental bodies who purchase items of tangible personal property with their own funds and are then reimbursed by the exempt organization, cannot purchase the items tax-free. As noted above, the sale must be made to the exempt entity and the sale must in furtherance of that entity's organizational purposes for the exemption to apply.

Persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See also 86 Ill. Adm. Code 130.1940.

Construction contractors should pay tax to their Illinois registered suppliers on building materials they will incorporate into real estate. If such materials are purchased without paying tax, such as from unregistered out-of-State suppliers, the purchasing contractors must self-assess and pay the Use Tax directly to the Department.

However, contractors who physically incorporate tangible personal property into real estate owned by exempt organizations that hold tax exempt "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

After the entity has provided their "E" number the contractor must provide their suppliers with the exemption identification number of the exempt organization that owns the property. In addition, they must provide their suppliers with certifications explaining they are making improvements to realty owned by the exempt organization by name and address of the realty being improved, and including the date the contract was executed.

Based upon these principles, we conclude the purchase of building materials by AAA as set out in your letter would subject the vendors to Retailers' Occupation Tax liability and AAA would incur Use Tax liability. Because AAA will not own the real estate, it cannot use its exemption number to purchase building materials tax-free under the provisions of Section 130.2075. You have not indicated that BBB has an E number. We therefore presume that BBB has no tax exemption identification number that can be used for this purpose.

In addition, AAA cannot use its own exemption number to buy building materials tax-free because use of that number is limited to purchases that would be in furtherance of AAA's organizational purposes. That is, an exempt organization must use its E number for its own organization's purposes, and that is not the case here. An entity such as BBB that does not have an E number cannot do indirectly what it cannot do directly.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

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Enc.